CHAPTER 8
DISCRIMINATION IN EMPLOYMENT
EMPLOYMENT SELECTION PROCEDURE
[Prior to 1/13/88, see Civil Rights 240—Chs 2, 3, 5, 6]

161—8.1(216) General provisions—employee selection procedures.

8.1(1) *"Test" defined.* For the purpose of the rules in this chapter, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The rules in this chapter apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

8.1(2) *"Discrimination" defined.* The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII, Civil Rights Act of 1964 and Iowa Code chapter 216 constitutes discrimination unless: The test has been validated and evidences a high degree of utility as described in subrule 8.1(3), and the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable.

8.1(3) *Evidence of validity.*

a. Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 8.1(2). Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

b. The term "technically feasible" as used in commission rules means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

c. Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of, or significantly correlated with, important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: Provided, that no significant differences exist between units, jobs, and applicant populations.

8.1(4) *Minimum standards for validation.*

a. For the purpose of satisfying the requirements of this chapter, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street, N.W., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behavior composing the job in question. The types of knowledge, skills or behavior contemplated here do not include those which can be acquired in a brief orientation to the job.

b. Although any appropriate validation strategy may be used to develop empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market: Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of that person's subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to ensure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and are not available through normal commercial channels must be included as part of the validation evidence.

(3) The work behavior or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behavior as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to ensure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these rules, pending separate validation of the test for the minority group in question. See 8.1(8). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

c. In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

1. The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

2. The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

3. The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

8.1(5) *Presentation of validity evidence.* The presentation of the results of a validation study must include graphic and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See 8.1(4)"*c,*" concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

8.1(6) *Use of other validity studies.* In cases where the validity of a test cannot be determined pursuant to 8.1(3) and 8.1(4) (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when:

a. The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and

b. There are no major differences in contextual variables or sample composition which are likely to significantly affect validity.

Any person citing evidence from other validity studies as evidence of test validity for their own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in *"a"* and *"b"* of this subrule.

8.1(7) *Assumption of validity.*

a. Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

b. Although professional supervision of testing activities may help greatly to ensure technically sound and nondiscriminatory test usage, this alone shall not be regarded as constituting satisfactory evidence of test validity.

8.1(8) *Continued use of tests.* Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue, provided: the person can cite substantial evidence of validity as described in 8.1(6); and the person has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

161—8.2(216) Employment agencies and employment services.

8.2(1) An employment service, including private employment agencies, state employment agencies, and the U.S. Training and Employment Service, as defined in Section 701(c) of Title VII, Civil Rights Act of 1964, or Iowa Code section 216.2, shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with commission rules.

8.2(2) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in commission rules. An employment service is not relieved of its obligation because the test user did not request validation or has requested the use of some lesser standard than is provided in commission rules.

8.2(3) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the rules in this chapter, before it administers the testing program or makes referral pursuant to the test results. The employment agency must furnish on request evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity. See 8.1(7). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 8.1(6).

161—8.3(216) Disparate treatment. The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the rules in this chapter—cannot be imposed upon any individual or class protected by Title VII, Civil Rights Act of 1964, or Iowa Code chapter 216 where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by Title VII or Iowa Code chapter 216 who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

161—8.4(216) Retesting. Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration of candidates who have previously failed and have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

161—8.5(216) Other selection techniques. Selection techniques other than tests, as defined in 8.1(1), may be improperly used so as to have the effect of discriminating against minority groups. These include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of that person's unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 8.1(3) and 8.1(4). Data suggesting the possibility of discrimination exists, for example, when there are differential rates of applicant rejection between minority and nonminority or between the sexes for the same job or group of jobs, or when there are disproportionate representations of minority and nonminority or members of one sex among present employees in different types of jobs. If the person is unable or unwilling to perform validation studies, that person has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

161—8.6(216) Affirmative action. Nothing in commission rules shall be interpreted as diminishing a person's obligation under Title VII, Civil Rights Act of 1964, Executive Order 11246 as amended by Executive Order 11375, or Iowa Code chapter 216 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to commission rules does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by Title VII and chapter 216.

161—8.7(216) Remedial and affirmative action.

8.7(1) *Policy statement.* Employers and other persons subject to the Act, Iowa Code chapter 216, are required to maintain nondiscriminatory employment and personnel systems and therefore are obligated to comply with the statute without awaiting the action of any governmental agency. Thus, employers and other persons subject to the Act who, after a self-analysis, have concluded that there is a likelihood that they may be found in violation of the Act because of some aspect of their employment and personnel system, are required by the statute to take remedial and affirmative action to correct the situation. An employer or other person subject to the Act who has a reasonable basis for concluding that it might be held in violation of the Act and who takes remedial and affirmative action reasonably calculated to avoid that result on the basis of self-analysis does not, in the opinion of the commission, thereby violate the Act with respect to any employee or applicant for employment who is denied an employment opportunity as a result of action. In the opinion of the commission, the lawfulness of remedial and affirmative action programs is not dependent upon an admission, or a finding, or evidence sufficient to prove that the employer or other person subject to the Act taking the action has violated the Act.

8.7(2) *Type of affirmative action covered.* In the opinion of the commission, an employer or other person subject to Executive Order Number 15 who has adopted an affirmative action program pursuant to and in conformity with Executive Order and federal and state regulations does not violate the Act by reason of its adherence to its affirmative action program. Furthermore, for purposes of demonstrating to the commission that an employer or other person has reasonably concluded that it might be held in violation of the Act and that the remedial and affirmative action it has taken is reasonably calculated to avoid that result, the employer or other person may rely on an analysis which has been conducted in order to comply with Revised Order 4 or related orders issued by the Office of Federal Contract Compliance Programs under Executive Order 11246, as amended, or similar analysis required under federal, state, and local laws prohibiting employment discrimination.

8.7(3) *Use of goals and numerical remedies.* The remedial and affirmative action programs contemplated by commission rules, whether taken by private employers or governmental employers or other persons covered by the Act, include the use of race, color, creed, sex, age, religion, disability, and ethnic-conscious goals and timetables, ratios, or other numerical remedies intended to remedy the prior discrimination against, or exclusion of, protected classes or to ensure that the employer's practices presently operate in a nondiscriminatory manner. Employers or other persons subject to the Act must be attentive to the effect of their employment practices in light of past discrimination by others. *Griggs v. Duke Power,* 401 U.S. 424(1971). Numerical remedies must be reasonable under the facts and circumstances which include any discrimination to be remedied and the relevant work force. Benefits under remedial and affirmative action programs need not be restricted to identifiable victims of past discrimination by the employer or other persons subject to the Act. Specific remedial and affirmative measures may include, but are not limited to, those described in the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies." (41 Federal Register 38814, September 13, 1976), which reads, in relevant part:

"2. Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the work force in the relevant job market who possess the basic job related qualifications.

"When substantial disparities are found through such analysis, each element of the overall selection process should be examined to determine which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking, certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

"3. When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex or ethnic 'conscious,' include, but are not limited to, the following:

"The establishment of a long term goal and short range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

"A recruitment program designed to attract qualified members of the group in question;

"A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking 'journeyperson' level knowledge or skills to enter and, with appropriate training, to progress in a career field;

"Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

"The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

"A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

"The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated."

8.7(4) *Written opinions.* If during the investigation of a charge an employer or other person asserts that the action complained of was taken pursuant to a program such as those described in these rules, the investigating official shall determine whether the program conformed to the requirements stated in these rules for a program. If the investigating official so finds, the investigating official will set forth the facts on which the findings are based and will issue a "no probable cause" finding on the complaint. If the employer or other person also asserts that the action complained of was taken in good faith, in conformity with and in reliance upon commission rules, the investigating official shall determine whether the assertion is true. If the investigating official so finds, the investigating official will set forth the facts on which this finding is based and include the finding with the other findings described in this section in the "no probable cause" finding.

8.7(5) *Reliance.* The commission shall apply the foregoing principles where the challenged person's action is taken pursuant to any attempt to comply with the antidiscrimination requirements of any federal, state, or local government laws.

8.7(6) *Limitations of standards.* The specifications of remedial and affirmative action in commission rules is intended only to identify certain types of actions which an employer or other person may take consistent with the Act but does not attempt to provide standards for determining whether voluntary attempts to eliminate discrimination against minorities and women have been successful. Whether, in any given case, the employer who takes remedial and affirmative action will have done enough to remedy discrimination against those protected by the Act will be a question of fact in each case.

161—8.8 to **8.14** Reserved.

AGE DISCRIMINATION IN EMPLOYMENT

161—8.15(216) Age discrimination in employment.

8.15(1) Any person who has reached 18 years of age may not be excluded from an employment right because of an arbitrary age limitation and shall be an aggrieved party for the purposes of Iowa Code section 216.15, regardless of whether the person is excluded by reason of excessive age or insufficient age, and shall possess all the rights and remedies for discrimination provided in section 216.15.

8.15(2) No employer, employment agency, or labor organization shall set an arbitrary age limitation in relation to employment or membership except as otherwise provided by commission rules or by the Iowa Code.

8.15(3) Help wanted notices. No newspaper or other publication published within the state of Iowa shall accept, publish, print or otherwise cause to be advertised any notice of an employment opportunity from an employer, employment agency, or labor organization containing any indication of a preference, limitation, or specification based upon age, except as provided in commission rules, unless the newspaper or publication has first obtained from the employer, employment agency, or labor organization an affidavit indicating that the age requirement for an applicant is a bona fide occupational qualification.

8.15(4) Help wanted notices of advertisements shall not contain terms and phrases such as "young," "boy," "girl," "college student," "recent college graduate," "retired person," or others of a similar nature unless there is a bona fide occupational requirement for the position.

8.15(5) Job applications for and other preemployment inquiries. An employer, employment agency or labor organization may make preemployment inquiry regarding the age of an applicant, provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any preemployment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect preemployment inquiry is based upon a bona fide occupational qualification.

8.15(6) Nothing in the above shall be construed to prohibit any inquiry as to whether an applicant is over 18 years of age.

8.15(7) Nothing in the above shall be construed to prohibit postemployment inquiries as to age where the inquiries serve legitimate record-keeping purposes.

8.15(8) Bona fide occupational qualifications.

a. An employer, employment agency, or labor organization may take any action otherwise prohibited under commission rules where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

b. The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

c. Age requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where requirements are necessarily related to the work which the employee must perform.

d. A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances such as where actors are required for characterizations of individuals of a specified age, or where persons are used to advertise or promote the sale of products designed for, and directed to, certain age groups.

161—8.16(216) Bona fide apprenticeship programs. Where an age limit is placed upon entrance into an apprenticeship program, the limitation shall not be a violation of Iowa Code chapter 216 where the employer can demonstrate a legitimate economic interest in the limitation in terms of the length of the training period and the costs involved in providing the training. The age limit shall not be set any lower than reasonably necessary to enable the employer to recover the costs of training the employee and a reasonable profit.

161—8.17(216) Employment benefits.

8.17(1) An employer is not required to provide the same pension, retirement, or insurance benefits to all employees where the cost varies with the age of the individual employee. Business necessity or bona fide underwriting criteria shall be the only basis used by employers for providing different benefits to employees of different ages unless the benefits are provided under a retirement plan or benefit system not adopted as a mere subterfuge to evade the purposes of the Act.

8.17(2) The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not authorize rejecting from employment an applicant who is over the maximum eligibility age for the retirement plan.

161—8.18(216) Retirement plans and benefit systems.

8.18(1) Commission rules shall not be construed so as to prohibit an employer from retiring an employee, or to require an employer to hire back an employee following retirement, or to hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system, provided that the plan or system is not a mere subterfuge for the purpose of evading the provisions of the Act.

8.18(2) However, a retirement plan or benefit system shall not require the involuntary retirement of a person under the age of 70 because of that person's age, with the following exceptions:

a. Peace officers, in the divisions of highway safety and uniformed force, criminal investigation and bureau of identification, drug law enforcement, beer and liquor law enforcement, police officers, firefighters, and conservation officers, so long as their maximum age by statute is 65 years;

b. Bona fide executives and high policymaking employees who have served in that capacity for the two prior years who are entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan of the employer which equals $27,000; and

c. The involuntary retirement of a person covered by collective bargaining agreement which was entered into by a labor organization and was in effect on September 1, 1977. This exemption does not apply after termination of that agreement or January 1, 1980, whichever first occurs.

8.18(3) State employees who are members of the Iowa public employee's retirement system are not subject to mandatory retirement based on age.

161—8.19 to **8.25** Reserved.

DISABILITY DISCRIMINATION IN EMPLOYMENT

161—8.26(216) Disability discrimination in employment.

8.26(1) The term "substantially handicapped person" shall mean any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

8.26(2) The term "physical or mental impairment" means:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

8.26(3) The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

8.26(4) The term "has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8.26(5) The term "is regarded as having an impairment" means:

a. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

c. Has none of the impairments defined to be "physical or mental impairments," but is perceived as having such an impairment.

8.26(6) The term "employer" shall include any employer, as defined in Iowa Code section 216.2(5), and labor organization, or employment agency insofar as their action or inaction may adversely affect employment opportunities.

161—8.27(216) Assessment and placement.

8.27(1) If examinations or other assessments are required, they should be directed toward determining whether an applicant for a job:

a. Has the physical and mental ability to perform the duties of the position. An individual applicant would have to identify the position for which the applicant has applied.

b. Is physically and mentally qualified to do the work without adverse consequences such as creating a danger to life or health of coemployees.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties and responsibilities which are required by the job.

8.27(2) Examinations or other assessments should consider the degree to which the person has compensated for the person's limitations and the rehabilitation service that person has received.

8.27(3) Physical standards for employment should be fair, reasonable, and adapted to the actual requirements of the employment. They shall be based on complete factual information concerning working conditions, hazards, and essential physical requirements of each job. Physical standards will not be used to arbitrarily eliminate the disabled person from consideration.

8.27(4) Where preemployment tests are used, the opportunity will be provided applicants with disabilities to demonstrate pertinent knowledge, skills and abilities by testing methods adapted to their special circumstances.

8.27(5) Probationary trial periods in employment for entry-level positions which meet the criteria of business necessity may be instituted by the employer to prevent arbitrary elimination of the disabled.

8.27(6) Reasonable accommodation. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

a. Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2)* Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

*b.** In determining pursuant to the first paragraph of this subrule whether an accommodation would impose an undue hardship on the operation of an employer's program, factors to be considered include:

(1) The overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the employer's operation, including the composition and structure of the employer's workforce; and

(3) The nature and cost of the accommodation needed.

Objection to 8.27(6)"a"*(2) and 8.27(6)*"b"* [prior to 1/13/88 numbered as 6.2(6)*"a"*(2) and 6.2(6)*"b,"* respectively,] reimposed 4/20/88, republished 5/4/88; see full text of objection at end of chapter.

c. An employer may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

8.27(7) Occupational training and retraining programs, including but not limited to guidance programs, apprentice training programs, on-the-job training programs and executive training programs, shall not be conducted in a manner to discriminate against persons with physical or mental disabilities.

161—8.28(216) Disabilities arising during employment. When an individual becomes disabled, from whatever cause, during a term of employment, the employer shall make every reasonable effort to continue the individual in the same position or to retain and reassign the employee and to assist that individual's rehabilitation. No terms in this rule shall be construed to mean that the employer must erect a training and skills center.

161—8.29(216) Wages and benefits.

8.29(1) While employers may reengineer the conditions of work for the disabled person, the salary paid to the person shall be no lower than the lowest listed on the applicable wage grade schedule.

8.29(2) The wage schedule must be unrelated to the existence of physical or mental disabilities.

8.29(3) It shall be an unfair employment practice for an employer to discriminate between persons who are disabled and those who are not, with regard to fringe benefits, unless there are bona fide underwriting criteria.

8.29(4) A condition of disability shall not constitute a bona fide underwriting criteria in and of itself.

161—8.30(216) Job policies.

8.30(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of disability.

8.30(2) If the employer deals with a bargaining representative for the employees and there is a written agreement on conditions of employment, it shall not be inconsistent with these guidelines.

161—8.31(216) Recruitment and advertisement.

8.31(1) It shall be an unfair employment practice for any employer to print or circulate or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application preemployment inquiry regarding mental or physical disability for prospective employment which is not a bona fide occupational qualification for employment and which directly or indirectly expresses any negative limitations, specifications, or discrimination as to persons with physical or mental disabilities. The burden shall be on the employer to demonstrate that the statement, advertisement, publication or inquiry is based upon a bona fide occupational qualification. This is subject, however, to the provisions of Iowa Code section 216.6(1)*"c."*

8.31(2) It shall be an unfair employment practice to ask any question on the employment application form regarding a physical or mental disability unless the question is based upon a bona fide occupational qualification. The burden will be on the employer to demonstrate that the question is based upon a bona fide occupational qualification.

8.31(3) An employment interviewer may inquire as to a physical or mental disability provided the inquiry is made in good faith for a nondiscriminatory purpose.

161—8.32(216) Bona fide occupational qualifications.

8.32(1) It shall be lawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under these rules where mental or physical ability is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

8.32(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

8.32(3) Physical or mental disability requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where the requirements are necessarily related to the work which the employee must perform.

161—8.33 to **8.45** Reserved.

SEX DISCRIMINATION IN EMPLOYMENT

161—8.46(216) General principles. References to "employer" and "employers" in these rules state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities as defined in the Act, (Iowa Code section 216.6).

161—8.47(216) Sex as a bona fide occupational qualification. The bona fide occupational qualification exception as to sex is strictly and narrowly construed. Labels—"men's jobs" and "women's jobs"—tend to unnecessarily deny employment opportunities to one sex or the other.

8.47(1) The following situations do not warrant the application of the bona fide occupational qualification exception:

a. The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general, for example, the assumption that the turnover rate among women is higher than among men;

b. The refusal to hire an individual based on stereotypical characterizations of the sexes, for example, that men are less capable of assembling intricate equipment or that women are less capable of aggressive sales work. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group;

c. The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers, except as covered specifically in 8.47(2).

8.47(2) Where it is necessary for the purpose of authenticity or genuineness, sex is a bona fide occupational qualification, e.g., an actor or actress.

161—8.48(216) Recruitment and advertising.

8.48(1) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

8.48(2) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification. The placement of an advertisement in columns headed "male" or "female" will be considered an expression of a preference, limitation, specification or discrimination based on sex.

161—8.49(216) Employment agencies.

8.49(1) Iowa Code sections 216.6(1)*"a"* and *"c"* specifically state that it shall be unlawful for an employment agency to discriminate against any individual because of sex. Private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

8.49(2) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency is not in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the commission of each job order. The record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

8.49(3) It is the responsibility of employment agencies to keep informed of opinions and decisions of the commission on sex discrimination.

161—8.50(216) Preemployment inquiries as to sex. A preemployment inquiry may ask "male . . ., female . . .,"; or "Mr., Mrs., Miss" provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any preemployment inquiry which expresses directly or indirectly a limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

161—8.51(216) Job policies and practices.

8.51(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for the employer's employees and there is a written agreement on conditions of employment, the agreement shall not be inconsistent with these guidelines.

8.51(2) Employees of both sexes shall have an equal opportunity to any available job that the employee is qualified to perform, unless sex is a bona fide occupational qualification.

8.51(3) No employer shall make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not violate these guidelines if the employer's contributions are the same for both sexes or if the resulting benefits are equal.

8.51(4) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; nor terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

8.51(5) The employer's policies and practices must ensure appropriate physical facilities to both sexes. The employer may not refuse to hire either sex, or deny either sex a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

8.51(6) An employer must not deny a female employee the right to any job that she is qualified to perform. For example, an employer's rules cannot bar a woman from a job that would require more than a certain number of hours or from working at jobs that require lifting or carrying more than designated weights.

161—8.52(216) Separate lines of progression and seniority systems.

8.52(1) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

a. A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression, and vice versa;

b. A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

8.52(2) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

161—8.53(216) Discriminatory wages.

8.53(1) The employer's wage schedules must not be related to or based on the sex of the employees.

8.53(2) The employer may not discriminatorily restrict one sex to certain job classifications. The employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex.

161—8.54(216) Terms and conditions of employment.

8.54(1) It shall be an unlawful employment practice for an employer to discriminate between either sex with regard to terms and conditions of employment.

8.54(2) Difference in benefits on a sexual basis.

a. Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that these conditions discriminatorily affect the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found to be a prima facie violation of the prohibition against sex discrimination contained in the Act.

b. It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees.

c. It shall not be a defense to a charge of sex discrimination in benefits under Iowa Code chapter 216 that the cost of benefits is greater with respect to one sex than the other.

8.54(3) A health insurance program provided in whole or in part by an employer shall include coverage for pregnancy-related conditions; the plan may exclude coverage of abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

161—8.55(216) Employment policies relating to pregnancy and childbirth.

8.55(1) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is a prima facie violation of Iowa Code chapter 216, and may be justified only upon showing of business necessity.

8.55(2) Disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

8.55(3) Disabilities caused or contributed to by legal abortion and recovery are, for all job-related purposes, temporary disabilities and should be treated as such under any temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

8.55(4) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, the termination violates the Act if it has a disparate impact on employees of one sex and is not justified by a business necessity.

161—8.56(216) Cease use of sex-segregated want ads.

8.56(1) All newspapers within the state of Iowa shall cease to use sex-segregated want ads—e.g., "Male Help Wanted," "Female Help Wanted," and "Male and Female Help Wanted" or "Men—Jobs of Interest," "Women—Jobs of Interest," and "Men and Women."

8.56(2) Any newspapers failing to comply with 8.56(1) shall be deemed in violation of the Act, Iowa Code section 216.6, and legal proceedings shall henceforth be initiated against them.

8.56(3) The commission will regard any publication of sex preference for a job to be in violation of the Act and, therefore, suggests that all Iowa newspapers refrain from publishing any sex preference which an employer in its job order may want printed.

8.56(4) The commission suggests that Iowa newspapers, instead of using sex-titled, sex-segregated want ads, use neutral want ads, e.g., "Help Wanted," "Jobs of Interest," "Positions Available."

161—8.57(216) Exception to ban on sex-segregated want ads.

8.57(1) The commission recognizes that sex may, in very limited circumstances, be a bona fide occupational qualification, e.g., a woman to be a women's fashion model. Therefore, an employer seeking to place a job order or a want ad which shows sex preference, must, by affidavit, claim that the preference is based upon bona fide occupational qualification.

8.57(2) The affidavit referred to in 8.57(1) must set out the complete basis upon which the employer believes that a person of a particular sex is required for the job the employer wishes to fill. The affidavit must also clearly state that the employer truly believes the sex preference is bona fide and that the employer, and not the newspaper or publisher of the ad, is responsible for the content of the ad.

8.57(3) Any newspaper, or other publisher which prints want ads, can publish a want ad with a sex preference if, and only if, that newspaper or publisher has received from the employer the affidavit referred to in 8.57(1) and 8.57(2). The newspaper or publisher, upon receipt of such affidavit, will submit a copy to the commission.

161—8.58 to **8.64** Reserved.

EMPLOYMENT PRACTICES IN STATE GOVERNMENT

161—8.65(216) Declaration of policy.

8.65(1) Equal opportunity and affirmative action toward its achievement is the policy of all units of Iowa state government. This policy shall apply in all areas where the state funds are expended, in employment, public service, grants and financial assistance, and in state licensing and regulation. All policies, programs and activities of state government shall be periodically reviewed and revised to ensure their fidelity to this policy.

8.65(2) Affirmative action required. All appointing authorities, and state agencies in the executive branch of government, shall abide by the requirements of Governor Robert D. Ray's Executive Order Number 15 and Iowa Code chapter 216.

Each agency shall designate an equal opportunity officer to be responsible for affirmative action policies intra-agency. Each agency shall prepare an affirmative action plan for that department in accordance with the criteria set forth in 8.7(216). All plans shall be subject to the review and comment of the affirmative action director of the commission. The affirmative action director shall make every effort to achieve compliance with affirmative action requirements by informal conference, conciliation and persuasion. Where failure to comply with Executive Order Number 15 results, the commission may initiate complaints against the noncomplying agencies.

8.65(3) Employment policies of state agencies. Each appointing authority shall review the recruitment, appointment, assignment, upgrading and promotion policies and activities for state employees to correct policies that discriminate on the basis of race, color, religion, sex, age, national origin or physical or mental handicap. All appointing authorities shall hire and promote employees without discrimination. Special attention shall be given to the allocation of funds for on-the-job training, the parity of civil service classes doing similar work, and the training of supervisory personnel in equal opportunity principles and procedures. Annually each appointing authority shall review their EEO-4 reports and include in their budget presentation necessary programs, goals and objectives, to improve the equal opportunity aspects of their department's employment policies. Each appointing authority shall make an annual report to the affirmative action director of the commission on persons hired, disciplined, terminated and vacancies occurring within their department.

8.65(4) State services and facilities. Every state agency shall render service to the citizens of this state without discrimination based on race, color, religion, sex, age, national origin or physical or mental handicap. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning such patterns or practices.

8.65(5) State employment services. All state agencies which provide employment referral or placement services to public or private employers shall accept job orders, refer for employment, test, classify, counsel, and train only on a nondiscriminatory basis. They shall refuse to fill any job orders designed to exclude anyone because of race, color, religion, creed, sex, national origin, age or disability. All agencies shall report to the commission any violations by state agencies and any private employers or unions which are known to persist in restrictive hiring practices.

8.65(6) State contracts and subcontracts. Every state contract for goods or services and for public works, including construction and repair of buildings, roads, bridges, and highways, shall contain a clause prohibiting discriminatory employment practices by contractors and subcontractors based on race, color, religion, creed, national origin, sex, age or disability. The nondiscrimination clause shall include a provision requiring state contractors and subcontractors to give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements. Contractual provisions shall be fully and effectively enforced and any breach of them shall be regarded as a material breach of contract.

8.65(7) State licensing and regulatory agencies. No state department, board, commission, or agency shall grant, deny, or revoke a license on the grounds of race, color, religion, creed, national origin, sex, age or disability. License, as defined in Iowa Code section 17A.2(5), includes the whole or a part of any agency permit, certificate, approval, registration, charter or similar form of permission required by statute. Any licensee, or any applicant for a license issued by a state agency, who operates in an unlawful discriminatory manner, shall, when consistent with the legal authority and rules and regulations of the appropriate licensing or regulatory agency, be subject to disciplinary action by the appropriate agencies as provided by law, including the denial, revocation, or suspension of the license. In determining whether to apply sanctions or not, a final decision of discrimination certified to the licensing agency by the commission shall be binding upon the licensing agency.

8.65(8) State financial assistance. Race, color, religion, creed, national origin, sex, age, physical or mental disability shall not be considered as limiting factors in state-administered programs involving the distribution of funds to qualified applicants for benefits authorized by law; nor shall state agencies provide grants, loans, or other financial assistance to public agencies, private institutions or organizations which engage in discriminatory practices.

8.65(9) Reports. All state agencies in the executive branch shall report annually to the commission. Reports shall cover both internal activities and relations with the public and with other state agencies and shall contain other information as may be specifically requested by the commission in order to enable it to compile the Governor's Annual Affirmative Action Report.

8.65(10) Cooperation in investigations. All state agencies shall cooperate fully with the commission and authorized federal agencies in their investigations of allegations of discrimination.

These rules are intended to implement Iowa Code chapter 216.

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**Effective date of 8.27(6)*"a"*(2) and 8.27(6)*"b"* delayed 70 days by the Administrative Rules Review Committee at their February 11, 1988, meeting.

OBJECTION

On July 11th, 1979, the administrative rules review committee voted the following objections:

The committee objects to ARC 0192, item 7, [appearing in IAB, 4/18/79] subparagraph *6.2(6)*"a"*(2), relating to reasonable accommodation, on the grounds the provisions are beyond the authority of the commission. Subrule 6.2(6) requires that employers make "reasonable accommodation to the physical or mental handicaps of an applicant, unless it can be shown to be an "undue hardship". The above cited paragraph provides that reasonable accommodation may include:

Job restructuring, part-time or modified work schedules, acquisition or modifications of equipment or devices, the provision of readers or interpreters, and other similar actions.

It is the opinion of the committee this definition of reasonable accommodation far exceeds that which may fairly be imputed from section 601A.6(1)*"a,"* which in part declares it to be "unfair discrimination" to:

. . . refuse to hire . . . any applicant for employment . . . because of . . . disability of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis of exception to the unfair or discriminating practices prohibited by this subsection.

For the purposes of the above paragraph, section 601A.2(11) defines disability as:

. . . the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation.

In reading these two sections together and giving effect to each, it appears that the Civil Rights Act prohibits employment discrimination on the grounds of disability only if either of the following criteria are met: (1) The handicap is not related to that particular occupation, or (2) The applicant is qualified by training or experience to perform that occupation, even if the handicap does relate to the occupation.

The General Assembly clearly has the authority to ban any or all discrimination against disabled persons, or to require employers to make the type of "reasonable accommodation" mandated by subrule *6.2(6)*"a"*(2). However, the statute does neither. Instead the criteria listed in the above paragraph are established to prohibit discrimination only against a "qualified" disabled applicant. The statute is designed to benefit the handicapped individual who has managed to overcome his or her disability. To mandate this type of reasonable accommodation would, in the case of more affluent employers, require that the handicap be ignored, and require these employers to overcome the handicap for the applicant. If employers are to make this type of reasonable accommodation the General Assembly should so provide by law, or specifically authorize the civil rights commission to make rules on the subject. To proceed otherwise implies that an administrative agency may interpret a broadly worded statute to mean whatever the agency chooses, and reduces the statute itself to a mere tool for the transferring of law making power to administrative agencies.

The committee also objects to paragraph *6.2(6)*"b"* in its entirety, on the grounds it is unreasonable. The paragraph lists the criteria to be used in determining whether an employer must make any reasonable accommodation at all. Under the provisions of paragraph 6.2(6)*"a"*(1), employers must make the job site accessible to and usable by handicapped persons. If this type of accommodation is to be mandated at all, the burden should be equally imposed upon all employers, without singling out any specific groups to be exempt from the burden imposed.

Renumbered as 8.27(6)"a"*(2) and 8.27(6)*"b"* IAC 1/13/88.
NOTE: Iowa Code chapter 601A renumbered as chapter 216 in 1993 Iowa Code.